

42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)

42 IAC 1-5-12 Use of state property

Due to the presence of a legislative mandate, the development and coordination of a two-day event and the display of the IHS's Lincoln collection state-wide was found to be consistent with the Use of state property rule. SEC also found no conflict of interest would arise for a special state appointee to participate in a decision or vote in which a business organization for whom he served as a trustee had a financial interest since legislation specifically required him to sit on the board in his capacity as a member of the organization.

December 13, 2007

No. 07-I-14

The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics pursuant to IC 4-2-6(b)(1).

BACKGROUND

A special state appointee serves as a Trustee for the Indiana Historical Society ("IHS"). The Board of Trustees is the governing body of the IHS and is responsible for the business and affairs of the corporation.

The special state appointee was appointed to serve on the Indiana Abraham Lincoln Bicentennial Commission ("IALBC") pursuant to the legislative requirement that one (1) member of the IHS, who is appointed by the Governor, serve on the IALBC. HEA 1540(d)(6).

The Indiana General Assembly established the IALBC to plan a statewide celebration of the 200th anniversary of Abraham Lincoln's birth. The IALBC falls within the purview of the State Department of Natural Resources ("DNR").

In furtherance of the IALBC's mission, the IALBC wishes to contract with the IHS for the development and coordination of a two-day event in addition to the display of the IHS's Lincoln collections statewide. The IHS is willing and able to enter these contracts; however, the special state appointee would like to ensure that there are no ethics violations in doing so due to his status as a member of both organizations. The special state appointee asserts that although the IALBC will compensate the IHS for services performed under the contracts, he has no personal financial interest in these transactions.

The special state appointee requests a formal advisory opinion from the Commission to determine whether any ethical problems would arise if the IALBC and the Museum entered into such a contract given his respective roles with the contracting entities.

ISSUES

1. May the IALBC and the Museum enter into a contract to pay for the costs of transporting Museum exhibits throughout the state?
2. Would a conflict of interest arise for the special state appointee if the Museum and the IALBC would enter into a contract given his dual roles as a Trustee for the IHS and Commissioner of the IALBC?

RELEVANT LAW

42 IAC 1-5-12 Use of state property

Sec. 12. A state officer, employee, or special state appointee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for

official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation.

IC 4-2-6-9

Conflict of economic interests

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

ANALYSIS

ISSUE 1

The IALBC's enabling legislation specifically charges the IALBC to perform various functions. HEA 1540(f). One of these functions is to honor Abraham Lincoln and educate Indiana residents and the nation about Indiana's important role in the life of Abraham Lincoln. HEA 1540(f)(1).

While approval of the intended contracts between the IALBC and the IHS is outside of the Commission's jurisdiction, the expenditure of funds by a special state appointee serving on the IALBC is subject to 42 IAC 1-5-12, the use of state property rule. The use of state property rule prohibits a special state appointee from utilizing state materials, including funds for any purpose other than for official state business.

ISSUE 2

Generally, IC 4-2-6-9 prohibits a state officer, employee, or special state appointee from participating in any decision or vote if the individual has knowledge that various persons, including the individual or a business organization in which the individual serves as a trustee, has a "financial interest" in the outcome of the matter.

In this case, the trustee, as an IALBC Commissioner, is a special state appointee. However, the special state appointee also serves as a Trustee for IHS. Accordingly, the special state appointee would be prohibited from participating in a decision or vote in which IHS has a financial

interest in the outcome of the matter. The term financial interest is defined to include an interest in a contract.

The special state appointee indicates that the IALBC will compensate the IHS for services performed under the contracts the parties intend to execute. While he would not appear to have a personal financial interest in the contracts, the IHS would appear to have a financial interest since it would receive compensation for services performed under those contracts. Accordingly, the special state appointee would be prohibited from participating in any decision or vote pertaining to these contracts.

However, in this particular case, the enabling legislation of the IALBC specifically designates that a member of the IHS, an entity which is specifically identified in the enabling legislation of the IALBC, must serve on the IALBC

CONCLUSION

ISSUE 1

Based upon the legislative mandate set forth in HEA 1540 (f)(1), the Commission finds that the development and coordination of a two day event and the display of the IHS's Lincoln collection state wide would be consistent with the Use of state property rule.

ISSUE 2

A conflict of interest would arise for the special state appointee under IC 4-2-6-9, but for the enabling legislation of the IALBC which specifically requires that he, as "a member of the IHS," serve on the IALBC. HEA 1540(d)(6) Accordingly, the Commission finds a conflict of interest would not arise in this case.